

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

| I. (a) PLAINTIFFS | | | ANCE DESCRIPTION OF SERVICE SE | DEFENDA | NTS | | | | | | |
|---|--|---|--|--|------------------|----------------------|--|---|--|---|---|
| Gotham Distributing Cor | poration | | | Comcast Cabl | | mmun | icati | ions, LLC, et | al. | | |
| (b) County of Residence | of First Listed Plaintiff XCEPT IN U.S. PLAINTIFF C | ASES) | 11116 | County of Resid | ND CC | (IN U | .S. PL | d Defendant AINTIFF CASES ON CASES, USE TOUCH | | | |
| (c) Attorneys (Firm Name, Don P. Foster, Esquire Offit Kurman, P.A., Ten Philadelphia, PA 19103; | Penn Center, 1801 Ma | arket St., Ste 2300 | | Attorneys (If Kn | nown) | | | | | | |
| II. BASIS OF JURISD | ICTION (Place an "X" in (| One Box Only) | III. CI | TIZENSHIP O | F P | RINC | [PA] | L PARTIES | (Place on "Y" in | 1 One Roy | for Plaintiff |
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| U.S. Government Defendant | ☐ 4 Diversity (Indicate Citizens) | nip of Parties in Item III) | Citize | en of Another State | ٥ | 2 🗇 | 2 | Incorporated and of Business In | | □ 5 | 5 |
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| IV. NATURE OF SUIT | (Place an "X" in One Box O | nly) | F0 | reign Country | | C | lick l | nere for: Nature | of Suit Code D | escriptio | ns. |
| CONTRACT | | ORTS | | ORFEITURE/PENAL | | | | KRUPTCY | | STATU | |
| □ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment ∞ Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excludes Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockholders' Suits □ 190 Other Contract □ 195 Contract Product Liability □ 196 Franchise REAL PROPERTY □ 210 Land Condemnation □ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torts to Land □ 245 Tort Product Liability □ 290 All Other Real Property | □ 330 Federal Employers' Liability □ 340 Marine □ 345 Marine Product Liability □ 350 Motor Vehicle □ 355 Motor Vehicle Product Liability □ 360 Other Personal Injury □ 362 Personal Injury - Medical Malpractice CIVIL RIGHTS □ 440 Other Civil Rights □ 441 Voting □ 442 Employment □ 443 Housing/ Accommodations □ 445 Amer. w/Disabilities - Employment □ 446 Amer. w/Disabilities - Other □ 448 Education | PERSONAL INJUR 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPEN 370 Other Fraud 371 Truth in Lending Property Damage Product Liability PERSONAL PROPEN 380 Other Personal Property Damage Product Liability PRISONER PETTEIO Habeas Corpus 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Othe 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement | 1 RTY | LABOR O Fair Labor Standards Act O Labor/Management Relations Railway Labor Act Family and Medical Leave Act O Cher Labor Litigatio Employee Retirement Income Security Act IMMIGRATION Naturalization Applic Other Labor Litigatio | e 8881 | 422 A | Appea Withdu Withdu 228 US PERSON Patent Patent New D Trader Trader HIA (1) Black I Black I Cassio 1 Faxes or Def | I 28 USC 158 rawal IC 157 TY RIGHTS ights - Abbreviated orug Application nark SECURITY (395ff) Lung (923) //DIWW (405(g)) Fitle XVI | 375 False C 376 Qui Tan 3729(a 400 State R 410 Antitrum 430 Banks a 450 Comme 460 Deporta 470 Rackete Corrupt 480 Consun 490 Cable/S 850 Securiti Exchan 890 Other S 891 Agricul 893 Environ 895 Freedor Act 896 Arbitrat 899 Admini Act/Rev | laims Act m (31 USC)) eapportion st und Bankin erce tion er Credit at TV ege tatutory A tural Acts mental Ma n of Inforn straiv or Ap Decision utionality of | ament ng ced and tions odities/ ctions tters nation ocedure opeal of |
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| VI. CAUSE OF ACTIO | DN 17 U.S.C. §§ 101 Brief description of ca Copyright Infringe | iuse: | | | | | | | | | |
| VII. REQUESTED IN COMPLAINT: | CHECK IF THIS UNDER RULE 2 | IS A CLASS ACTION | DI | EMAND \$ | | | | ECK YES only RY DEMAND: | | complai | nt: |
| VIII. RELATED CASE IF ANY | (See instructions): | JUDGE | | | - | _ DOC | KET | NUMBER | | | |
| DATE 08/24/2018 | | SIGNATURE OF ATT | ORNEY O | 11 | | | | | | | |
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MS6

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

18CV 3647

DESIGNATION FORM

| (to be used by counsel | or pro se plaintiff to indicate the category of the case for the p | purpose of assignment to the appropriate calendar) |
|--|--|--|
| Address of Plaintiff: Goth | one Distributing Corps, 60 Por | Hard Rock, Conshervation, A 1942 Concest Court, 1761 JFK Block Phile, |
| Address of Defendant: | st Cable Communications, One | Concest Court, 1761 JFK Blide Phile, |
| Place of Accident, Incident or Tr | | /9/ |
| | | |
| RELATED CASE, IF ANY: | | |
| Case Number | Judge | Date Terminated |
| Civil cases are deemed related when | Yes is answered to any of the following questions | |
| Is this case related to property is previously terminated action in | ncluded in an earlier numbered suit pending or within of this court? | one year Yes No No |
| | e issue of fact or grow out of the same transaction as a priously terminated action in this court? | prior suit Yes No. |
| | lity or infringement of a patent already in suit or any ear in one year previously terminated action of this court? | urlier Yes No |
| 4 Is this case a second or success case filed by the same individu | ive habeas corpus, social security appeal, or pro se civil al? | 1 rights Yes No |
| I certify that, to my knowledge, the this court except as noted above. DATE \$\int 24\big 18 | | w pending or within one year previously terminated action in 25809 Attorney I D # (if applicable) |
| CIVIL: (Place a √ in one category only | v) | |
| A. Federal Question Cases: | B. Diversit | ty Jurisdiction Cases: |
| 2. FELA 3. Jones Act-Personal Injury 4. Antitrust 5. Patent 6 Labor-Management Relat 7. Civil Rights 8. Habeas Corpus 9. Securities Act(s) Cases | 2. Ai | Issurance Contract and Other Contracts irplane Personal Injury ssault, Defamation Iarine Personal Injury Iotor Vehicle Personal Injury ther Personal Injury (Please specify) roducts Liability roducts Liability Asbestos Il other Diversity Cases |
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| | , counsel of record or pro se plaintiff, do here | |
| exceed the sum of \$150,0 | 00.00 exclusive of interest and costs | nd belief, the damages recoverable in this civil action case |
| Relief other than monetar | y damages is sought. | 1410.04.00 |
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| | Attorney-at-Law / Pro Se Plain | |

M56

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

| Gotham Distributing | Ca19- | CIVIL ACTION | |
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| v. Concest Cable Communi | : | NO. 18CV | 1364- |
| plaintiff shall complete a Ca filing the complaint and serv side of this form.) In the of designation, that defendant so the plaintiff and all other parts | se Management Track Designa e a copy on all defendants. (See event that a defendant does no shall, with its first appearance, | teduction Plan of this court, countion Form in all civil cases at the \$\frac{1}{2}\] 1:03 of the plan set forth on the tagree with the plaintiff regards submit to the clerk of court and so the court and so the clerk of court a | insel for time of e reverse ing said serve on |
| SELECT ONE OF THE FO | OLLOWING CASE MANAG | EMENT TRACKS: | |
| (a) Habeas Corpus Cases | brought under 28 U.S.C. § 224 | 1 through § 2255. | () |
| | requesting review of a decision ying plaintiff Social Security I | | () |
| (c) Arbitration - Cases requ | ired to be designated for arbitra | ation under Local Civil Rule 53.2 | 2. () |
| (d) Asbestos - Cases involv exposure to asbestos. | ing claims for personal injury of | or property damage from | () |
| commonly referred to as | Cases that do not fall into tracks complex and that need special side of this form for a detailed of | or intense management by | () |
| (f) Standard Management - | Cases that do not fall into any | one of the other tracks. | K |
| 8/24/18 Date 267-338-1300 | Den P. Fosker Ex Attorney-at-law 2 267-338-/335 | Plaintiff. Attorney for diagrams of the | Work Our |
| Telephone | FAX Number | E-Mail Address | |
| | | | |

(Civ. 660) 10/02

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GOTHAM DISTRIBUTING CORPORATION 60 PORTLAND ROAD CONSHOHOCKEN, PA 19428

Plaintiff,

CIVIL ACTION

v.

COMCAST CABLE COMMUNICATIONS, LLC ONE COMCAST COURT 1701 JFK BOULEVARD PHILADELPHIA, PA 19103 NO:

and

JUSTWATCH BOXHAGENER STR. 18 10245 BERLIN, GERMANY COMPLAINT FOR COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

and

VIEWSTER AG 666 THIRD AVENUE, 30TH FLOOR NEW YORK, NY 10017

and

EPIX ENTERTAINMENT LLC 1540 BROADWAY, 31ST FLOOR NEW YORK, NY 10036

and

TIVO CORPORATION 2233 NORTH ONTARIO STREET BURBANK, CA 91504-4503

and

GRACENOTE, INC. 2000 POWELL STREET, SUITE 1500 EMERYVILLE, CA 94608

and

JOHN DOE 1-50, INCLUSIVE

Defendants.

Plaintiffs, Gotham Distributing Corporation, d/b/a Alpha Video Distributors, Inc. (hereinafter "Alpha" or "Alpha Video"), hereby bring this complaint for copyright infringement and in support thereof do aver as follows:

PRELIMINARY STATEMENT

- 1. This is a claim for direct, contributory and vicarious copyright infringement against each of the Defendants. Plaintiffs bring this action to put a stop to, and obtain redress for, Defendants' purposeful infringement of Alpha Video's original works of artistic expression created and sold by Alpha in connection with its marketing and sale of public domain movies, television shows, documentaries, animated cartoons, sports related shorts and musical performances (hereafter "Alpha programs" when collectively described) in Digital Versatile Disc ("DVD").
- 2. Alpha Video is the worldwide leading manufacturer and marketer of budget-priced classic movies and television shows on DVD. It has over 3,500 active titles available on DVD, and maintains a release schedule of 15+ new DVDs each month.
- 3. Alpha markets and sells its DVDs via the internet at its www.oldies.com website, distributors, retail stores and 3rd party websites as well as

a hard copy catalogue, all of which identify Alpha as the consumer's preferred source for, *inter alia*, hard-to-find vintage films and television shows.

- 4. A key component of Alpha's sales strategy is the design, development and creation of original art that it uses on its website and in its catalogue to identify the name of the Alpha program and its stars, as well as to depict visually the theme of the movie, whether western, comedy, drama, suspense or horror, to name a few. This artwork is affixed to the DVD when it is manufactured and accompanies the DVD upon shipment.
- 5. An example of this artwork is attached as Exhibit "A", which is a reproduction of the copyrighted art that accompanies the movie "Woman in Green", starring Basil Rathbone as the fictional detective Sherlock Holmes.
- 6. All of the artwork authored by Alpha to be used in the marketing, advertising and sale of its DVDs qualifies as protected work under applicable copyright law, and has in addition been registered by Alpha with the United States Copyright Office as original visual material derived largely from preexisting photography or movie stills pursuant to sections 101 and 102 of the Copyright Act, 17 U.S.C. §§ 101, 102.
- 7. The Defendants collectively distribute video content online to endusers who often pay a fee to either purchase the content outright or rent it for a limited period of time, whether it be a day, week, month or other period of time set

by the retail provider of the content. As is set forth in more detail below,

Defendants occupy varying positions in the video content supply chain. Some are
the wholesale supplier of content, others make a platform available for multiple
retail sellers and others, such as Defendant Comcast, are the retail seller itself.

- 8. Each of the Defendants has rented, sold or otherwise distributed the same movies that Alpha sells in DVD format to its customers. In connection with the sale or distribution of this content, each of the Defendants has, without any privilege, right, license or other authority, used Alpha's protected work, thereby infringing upon Alpha's exclusive rights in that protected work. Each Defendant has done so willfully, after notice, or otherwise in reckless disregard of the author's obvious copyright.
- 9. Defendants' conduct has caused, and continues to cause, irreparable harm to Alpha. With this complaint, Alpha seeks an injunction against the continued unauthorized use of its protected works and both compensatory and statutory damages.

JURISDICTION AND VENUE

10. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17, U.S.C. § 101 et. seq.

- 11. This Court has subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
- 12. This Court has personal jurisdiction over Defendants because, among other things, Defendants do business in the Commonwealth of Pennsylvania, the acts of infringement complained of occurred within this Commonwealth and Defendants have caused injury to Plaintiff and its intellectual property within Pennsylvania.
- 13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c) in that the infringement complained of, and the harm suffered by Plaintiff, occurred in this District and each Defendant either resides in, or has substantial and continuous ties to, this District.

THE PARTIES

- 14. Plaintiff, Gotham Distributing Corporation, d/b/a Alpha Video Distributors, is a corporation that is organized and exists under the laws of the Commonwealth of Pennsylvania. Its principal place of business is located at 60 Portland Road, Conshohocken, Pa. It is an entertainment company that specializes in the manufacturing and marketing of public domain programs on DVD.
- 15. Comcast Corp. ("Comcast") is a corporation that is organized and exists under the laws of the Commonwealth of Pennsylvania. Its corporate headquarters are located at 1701 John F Kennedy Blvd, Philadelphia, PA 19103.

Comcast is a telecommunications conglomerate that provides pay-TV, cable TV and internet and telephone service, among other telecommunications services and products, to commercial and residential customers in 40 states and the District of Columbia.

- 16. Defendant, Gracenote, Inc. ("Gracenote"), is a corporation that is organized and exists under the laws of the State of Delaware. Its corporate headquarters are located at 2000 Powell Street, Suite 1500, Emeryville, CA 94608. Gracenote is a successor-in-interest to the Tribune Media Services, Inc. ("Tribune Media"), a division of Tribune Media Co. In 2104, Tribune Media merged with Gracenote to form one company under the Gracenote name. All references hereafter to alleged illegal acts of Gracenote include acts by Gracenote individually as well as premerger acts of Tribune Media.
- 17. Defendant, EPIX Entertainment, LLC ("EPIX") is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business located at 260 Madison Avenue, 9th Floor, New York, NY 10016. EPIX is a 24-hour premium pay TV network with an inventory of video content that includes vintage Hollywood movies. EPIX is available nationwide through cable, satellite, telco and streaming TV providers including Charter Spectrum, Cox, Verizon FiOS, AT&T U-verse, Dish Network, Sling TV, PlayStation Vue and Comcast.

- 18. Defendant, JustWatch GmbH ("JustWatch") is a German Company with headquarters located at Boxhagener Str. 18, Berlin 10245 DE, and an office in the United States located at 3535 Hayden Avenue, Los Angeles, CA 90033.

 JustWatch operates an internet search engine available worldwide which is designed to locate video content available from content providers such as Vudu, iTunes, Amazon Instant Video, HBO Now, Showtime, EPIX, Crackle, XBox, PlayStation, and others.
- 19. Defendant, Viewster AG ("Viewster") is a Swiss Company with headquarters located at Muehlebachstrasse 162, Zuerich 8008 CH, and a United States Office located at 666 Third Avenue, 30th Fl., New York, New York 10017. Viewster is a global video on demand service that offers a wide range of adsupported free TV shows and movies for download and viewing by customers around the world.
- 20. Defendant, TiVo Corporation ("TiVo") is a corporation organized and existing under the laws of the State of Delaware with corporate headquarters located at 2233 North Ontario Street, Burbank, CA 91504-4503. TiVo sells a digital video recorder ("DVR") which, when connected to a home network provides an on-screen guide of scheduled broadcast programming television programs and other features which allow the user to find and record shows that match their interests by title, actor, director, category, or keyword. TiVo also

provides a platform that enables viewers to watch recorded content from both cable providers and streaming services. In connection with its video offerings and distribution services that it provides to content providers, TiVo also maintains a proprietary database of films and television shows that it sells, leases, licenses or otherwise provides to providers of content, such as Fandango.

21. John Doe defendants 1-50 ("the Doe defendants") inclusive are entities or persons who have directly, vicariously and/or contributorily infringed Alpha Video's copyright protected works in connection with commercial dealings with the named Defendants, or otherwise. The identities of the Doe defendants will be disclosed during discovery.

FACTUAL AVERMENTS

22. The specific acts of infringement of which Alpha is currently aware include the following:

Gracenote

23. Gracenote is a leading entertainment data and technology company. Its Global Video Database includes a collection of worldwide TV, movie and on demand data that cable, satellite, OTT and service providers around the world, including Comcast, rely on for TV scheduling, video searches and discovery, and to permit their audiences to locate and purchase video content.

24. Gracenote, by and through its predecessor-in-interest, Tribune Media, in and around October 2015 and thereafter, copied Alpha's original artwork and, on information and belief, supplied it to multiple streaming video services, including, for example, the GetTV on-demand streaming movie service:

| Film Title | Alpha Copyright Registration | | |
|-----------------|------------------------------|--|--|
| The Kansan | VAu000668361 | | |
| Africa Screams | VAu0001924674 | | |
| Corpse Vanishes | Vau000990652 | | |

By letter dated October 16, 2015, Alpha provided written notice to Tribune of its infringing activity, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated by reference.

- 25. In addition, upon information and belief, Gracenote provides Comcast with content used by Comcast and Comcast's affiliate, Fandango, Inc.

 ("Fandango") when offering movies and television shows for viewing by Comcast and Fandango subscribers. Included with the content sold by Gracenote to Comcast and Fandango is artwork that Comcast and Fandango use to promote their offerings. That artwork has included Alpha's protected works, which is described at greater length in paragraph 4, which is incorporated by reference.
- 26. Because Gracenote is a leading provider of TV, movie and on demand data that cable, satellite, over the top ("OTT") and service providers around the

world use for their scheduling and video programming, Alpha believes, and therefore avers, that Gracenote has sold Alpha's protected works to content providers, who have in turn unlawfully utilized Alpha protected material for their commercial gain. The identity of these content providers, and the specific protected works used by them, is unknown to Alpha and will be the subject of discovery.

Comcast/Fandango

27. Beginning on an undetermined date prior to July 10, 2017, the precise date being known to Comcast, Comcast and/or Fandango displayed at least the following Alpha copyrighted artwork in connection with their film offerings to subscribers:

| Film Title | | Alpha Copyright Registration # |
|-----------------------|------|--------------------------------|
| Detour | | VAu000586681 |
| Grave of The Vampire | | VAu00063055 |
| The Corpse Vanishes | | VAu00099065 |
| Dick Tracy v. Cueball | | VAu00059493 |
| Dick Tracy, Detective | | VA 2078087 |
| One Body Too Many | | VAu00057944 |
| Manos: The Hands of | Fate | VAu000597357 |
| Scared To Death | | VAu594934 |
| Santa Fe Trail | | VAu001108191 |

- 28. Alpha placed Comcast on notice of its infringing conduct by letters dated July 10, and July 18, 2017, copies of which are attached as Exhibits "C" and "D", respectively and incorporated by reference.
- In response, and upon information and belief based upon a follow-up 29. inspection of Comcast's website, Comcast ceased using some of the specific images identified in the letters referred to in the previous paragraph. However, on and before November 8, 2017, Comcast continued to use Alpha artwork in connection with other offerings, including, but not limited to:

| Film Title | Alpha Copyright Registration # |
|-----------------------|--------------------------------|
| Santa Fe Trail | VAu001108191 |
| Grave of The Vampire | VAu00063055 |
| Rough Riders Round-Up | VAu000575282 |

- Alpha notified Comcast of its ongoing use of Alpha's protected works 30. by letter dated January 19, 2018, a copy of which is attached hereto as Exhibit "E" and is incorporated by reference.
- In addition to its own publication and use of Alpha's protected work, 31. Alpha believes, and therefore avers, that Comcast has also sold, leased, licensed, enabled or otherwise made available to third parties Alpha's protected work for their commercial use. The identity of these content parties, and the specific

protected works used by them, is unknown to Alpha and will be the subject of discovery.

32. Comcast, as well as any other party similarly situated, controls a number of independent, subsidiary or affiliated entities that Alpha believes are directly infringing, to Comcast's financial benefit, the identity of which Alpha will be able to determine during discovery.

EPIX

- 33. Beginning at a time presently unknown to Plaintiff, but at least prior to January 19, 2018, EPIX used Alpha's protected works in connection with the streaming, downloading, sale, lease and/or rental of movies EPIX makes available for viewing. The movies and the related artwork can be accessed on EPIX's streaming video website, its mobile movie application and EPIX content available on Roku, Chromecast, AppleTV, Xbox 360, Fandango and Smart TVs, among other possible means of access.
- 34. A list of 92 movies and related Alpha artwork appearing on EPIX's website as of December 14, 2017, together with the related copyright registration number, is attached as Exhibit "F" and is incorporated by reference. Upon information and belief, this list is representative only and is not intended to be a complete catalogue of all film titles and Alpha artwork displayed by EPIX. Alpha reserves to supplement this list upon further discovery. Alpha notified EPIX of its

infringement of Alpha's exclusive rights in the artwork by letter dated January 19, 2018, which is attached as Exhibit "G" and incorporated herein by reference.

Justwatch

- 35. Beginning at a time presently unknown to Plaintiff, but at least prior to January 19, 2018, Justwatch used Alpha's protected works in connection with the streaming, downloading, sale, lease and/or rental of not less than 82 films. A list of these films, with the corresponding Alpha copyright registration is attached as Exhibit "H" and incorporated by reference.
- 36. By letter dated January 19, 2018, Alpha notified Justwatch of its infringing activity with a written letter. A true and correct copy of this letter is attached as Exhibit "I" and is incorporated by reference.

Viewster

37. Beginning at a time presently unknown to Plaintiff, but at least prior to December 5, 2017, Viewster used Alpha's protected works in connection with the streaming, downloading, sale, lease and/or rental of movies that Viewster made available to its customer base for viewing. These movies could be accessed on Viewster's streaming website, its mobile movie application and Viewster content that could be accessed by end-users on Roku, Chromecast, Apple TV, Xbox 360 and Smart TVs, among other possible means of access. Examples of the Alpha artwork used by Viewster include:

| <u>Film Title</u> | Alpha Copyright Registration # |
|-------------------|--------------------------------|
| | |
| | |

The Red House VAu000587456
Bells of Rosarita VAu001048159
Buffalo Bill in Tomahawk Territory VAu000589400
The Bold Caballero VAu000981725
The Woman in Green VAu0001162761

38. By letter dated December 5, 2017, Alpha notified Viewster of its unauthorized use of its protected works. A true and correct copy of this letter is attached as Exhibit "J" and is incorporated by reference.

TiVo

39. Upon information and belief, beginning at a time unknown to Plaintiff, but at least prior to January 19, 2018, TiVo sourced and disseminated Alpha images in connection with the delivery of video offerings stored in its film database to other content providers such as Fandango. Alpha believes, and therefore avers, that these images include, but are not limited to, the artwork associated with the following film titles:

| Film Title | Alpha Copyright Registration # |
|---------------------------------------|--------------------------------|
| Sherlock Holmes and the Secret Weapon | VAu000570626 |
| Terror By Night | VAu000586690 |
| The Woman in Green | VAu0001162761 |

- 40. Because TiVo provides a popular platform that enables viewers to watch recorded content from both cable providers and streaming services, and because TiVo also maintains a proprietary database of films and television shows that it sells, leases, licenses or otherwise provides to providers of content, Alpha believes, and therefore avers, that TiVo has sold Alpha protected works to other content providers, who have in turn publicized that artwork for their commercial gain. The identity of these content providers, and the specific protected works used by them, is unknown to Alpha and will be the subject of discovery.
- 41. By letter dated January 19, 2018, Alpha notified TiVo that its database included Alpha protected works, and that that database was the source of unauthorized use by Fandango and others of Alpha's copyrighted material. A true and correct copy of this letter is attached as Exhibit "K" and is incorporated by reference.

ADDITIONAL AVERMENTS COMMON TO ALL DEFENDANTS

- 42. In the three years prior to the filing of this Complaint, each of the Defendants has reproduced, distributed and/or publicly displayed Alpha Video's protected works in order to promote, market and sell their product and/or services, with the intent to financially gain from that use.
- 43. In addition to directly infringing upon Alpha's exclusive rights in its protected works, each defendant has knowingly induced, caused, encouraged or

materially contributed other parties, both named and unnamed, to reproduce, distribute and/or publicly display Alpha Video's protected works.

- 44. Despite notice, Defendants have failed to cease their use of Alpha's artwork and their infringement on Alpha's exclusive rights in that artwork.
- 45. Defendants' infringement has been undertaken knowingly, and with the intent to gain financially from Alpha's protected works. Defendants have failed to supervise individuals within their control to monitor and prevent infringement in an industry in which infringing activity is frequent, and in which it is commonly known that movie poster art is typically copyrighted.
- 46. On information and belief, Defendants' infringement is not limited to the copyright infringement listed above, which Alpha represents, on information and belief, is simply representative of Defendants' infringing conduct. Information regarding the identification of all movie titles and associated artwork used by the Defendants and the extent and duration of that use is in the exclusive control of the individual Defendants. Plaintiff will identify such additional infringement after discovery.
- 47. As result of such infringement, Alpha seeks all remedies available to it under the Copyright Act, including, but not limited to:
 - a) Temporary or final injunctive relief pursuant to 17 U.S.C. §502

to prevent or restrain infringement of a copyright against: (1) Defendants; (2) Defendants' officers, agents, servants, employees, attorneys; and (3) other persons who are in active concert or participation with them, including all distributors and suppliers of the infringing works;

- b) Impounding and destruction of all Alpha protected works in the possession or under the control of any Defendant, pursuant to 17 U.S.C. §503;
- c) Actual damages suffered by Plaintiff as a result of the infringement pursuant to 17 U.S.C. §504(b);
- d) Any profits of Defendants that are attributable to the infringement and are not taken into account in computing the actual damages pursuant to 17 U.S.C. §504(b);
- e) At Plaintiff's election, statutory damages in lieu of actual damages and profits, for all infringements involved in the action, with respect to any one work, for which any one Defendant is liable individually, or for which Defendants are liable jointly and severally with another, in a sum of not less than \$750 or more than \$30,000 as the Court considers just pursuant to 17 U.S. C. §504(c)(1), and to the extent the court finds that infringement was committed willfully, and statutory damages of up to \$150,000 per violation for any infringement deemed to have been willful, pursuant to 17 U.S.C. §504(c)(2);

f) Reimbursement of Alpha's costs and attorney's fees incurred as a result of its effort to protect its exclusive rights, pursuant to 17 U.S.C. §505.

COUNT I (Direct Copyright Infringement: All Defendants)

- 48. The allegations set forth above in paragraphs 1-46 are incorporated by reference as though set forth in full.
- 49. Each Defendant has knowingly and willfully produced, reproduced, distributed and/or publicly displayed Alpha Video's protected works without Alpha's consent or any legal justification or excuse.
- 50. As a result of Defendants' willful and intentional infringement Alpha Video is entitled to all of the remedies afforded by the Copyright Act.
- 51. Defendants' infringement has caused, and is causing, irreparable harm to Alpha Video, for which it has no adequate remedy at law. Unless this Court restrains Defendants' infringement, this harm will continue into the future.

 Accordingly, Alpha is entitled to preliminary and permanent injunctive relief.

WHEREFORE, Plaintiff, Gotham Distributing Corporation, prays that the Court enter judgment in its favor and against each Defendant, and order further that:

a) each Defendant is enjoined from any further infringement of Plaintiff's copyrights;

- b) all protected works in any Defendant's possession or under its control be impounded and destroyed;
- c) compensatory and statutory damages be awarded up to \$150,000 per infringing act; and
- d) such other relief be granted as is appropriate under the circumstances, including an award of costs and attorney's fees.

COUNT II

(Vicarious Infringement: Gracenote, Comcast, Tivo and Doe defendants)

- 52. The allegations set forth above in paragraphs 1-50 are incorporated herein by reference.
- 53. Upon information and belief, Gracenote, through its predecessor-in-interest Tribune Media Co., Comcast, TiVo and one or more of the Doe defendants had and/or have the right and ability to supervise, and thereby control, the activity of others that directly infringe Alpha's copyrights.
- 54. Defendants failed to exercise, or to exercise properly and effectively, their right and ability to supervise and control the infringing conduct.
- 55. Each Defendant has a direct financial interest in the infringing activity.

WHEREFORE, Plaintiff, Gotham Distributing Corporation, prays that the Court enter judgment in its favor and against Comcast and TiVo, individually, and order further that:

- a) each Defendant is enjoined from any further infringement of Plaintiff's copyrights;
- b) all protected works in any Defendant's possession or under its control be impounded and destroyed;
- c) compensatory and statutory damages be awarded up to \$150,000 per infringing act; and
- d) such other relief be granted as is appropriate under the circumstances, including an award of costs and attorney's fees.

COUNT III (Contributory Infringement: Comcast, Gracenote, TiVo and Doe defendants)

- 56. The allegations set forth above in paragraphs 1-50 are incorporated herein by reference.
- 57. At all relevant times, each of Comcast, Gracenote and TiVo knew, or had reason to know, of the unauthorized use by third parties of Alpha's protected works.
- 58. Each of Comcast, Gracenote and TiVo, have participated, and continue to participate substantially in the infringing activity of third parties by,

inter alia, selling, leasing, or otherwise making available Alpha protected works to third parties for their commercial use, providing access to databases containing Alpha protected works for republication or broadcast by third parties, and/or providing a platform for viewing, displaying and broadcasting Alpha protected works.

59. Each of Comcast, Gracenote and TiVo, by disseminating Alpha protected works to third parties and/or making such works available to third parties by providing access to their databases, or by disseminating Alpha protected works over a network that they controlled, induced, caused, encouraged or materially contributed to infringing activity by third parties.

WHEREFORE, Plaintiff, Gotham Distributing Corporation, prays that the Court enter judgment in its favor and against each Defendant, and order further that:

- a) each Defendant is enjoined from any further infringement of Plaintiff's copyrights;
- b) all protected works in any Defendant's possession or under its control be impounded and destroyed;
- c) compensatory and statutory damages be awarded up to \$150,000 per infringing act; and

d) such other relief be granted as is appropriate under the circumstances, including an award of costs and attorney's fees.

Date: August 24, 2018

OFFIT KURMANP.A.

By: Michael Conley (I.D. No. 54142)

Don P. Foster (I.D. No. 25809)

1801 Market Street, Suite 2300

Philadelphia, Pa. 19103

Tel: (267) 338-1357

Fax: (267) 338-1335

dfoster@offitkurman.com

EXHIBIT "A"

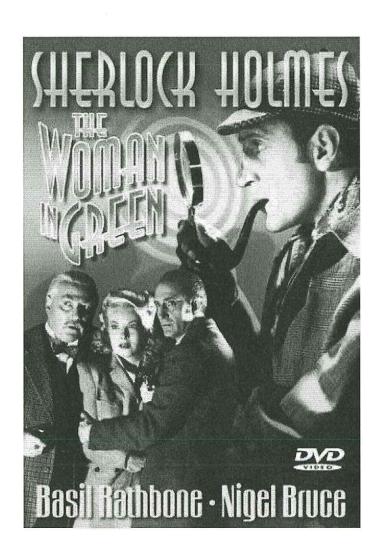


EXHIBIT "B"



October 16, 2015

David B. Sunshine

Direct Phone 212-883-4911

Direct Fax 866-812-3650

dsunshine@cozen.com

VIA UPS

Tribune Media Services, Inc. 435 N. Michigan Avenue, Suite 1500 Chicago, Illinois 60611

Att. General Counsel

Re: Copyright Infringement by Tribune Media Corporation

Dear Sir/Madam:

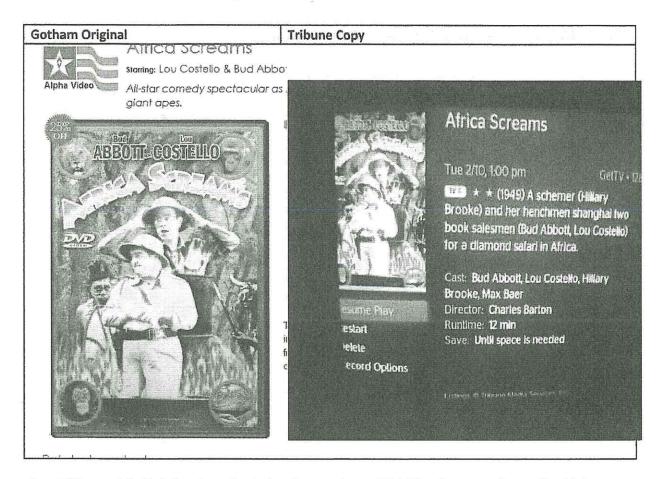
We represent Gotham Distributing Corporation d/b/a Alpha Video Distributors (collectively, "Gotham") of West Conshohocken, PA in connection with intellectual property matters. Founded in 1980, Gotham is a privately held independent distributor of movies and music that specializes in, among other things, supplying hard-to-find CDs and DVD movies to retailers and individual customers. Gotham operates the e-commerce website Oldies.com.

As part of its business, Gotham sells and markets classic movies and television shows which are in the public domain. Gotham will often acquire the movies in their original film format and then convert that original film to DVD format. In addition, Gotham creates original cover art to be placed on the DVD packaging for the movie or television show. In fact, Gotham employs a team of several designers whose sole responsibility is to design unique and creative cover art for the DVDs. Gotham owns U.S. copyright registrations for its original artwork.

It has recently come to our attention that Tribune Media Services, Inc. ("Tribune") has blatantly copied Gotham's original artwork in connection with a substantial number of movie and television titles. The infringing artwork can be found at least on through GetTV on-demand streaming movie service. By way of example, below is a comparison of Gotham's originally movie title artwork to Tribune's identical copy:

LEGAL\24406597\1

Tribune Media Services, Inc. October 16, 2015 Page 2



In addition, set forth below is a chart showing movie and TV titles in connection with which Tribune uses infringing artwork along with Gotham's corresponding copyright registrations. Since our investigation is ongoing, this list is by no means intended to be exhaustive.

| Film Title Corresponding to Infringing Artwork | Gotham Copyright Registration Number |
|--|--------------------------------------|
| The Kansan | VAu000668361 |
| Africa Screams | VA0001924674 |
| Bowery At Midnight | VAu000591310 |
| Corpse Vanishes | VAu000990652 |
| Inspector General | VAu000624227 |

As demonstrated above, Tribune infringing artwork is identical in every respect to Gotham's original artwork. Tribune's display and copying of Gotham's original artwork infringes Gotham's copyrights in violation of at least Sections 106 and 501 of the U.S. Copyright Act. Moreover, since Gotham's artwork is registered with the U.S. Copyright Office, Gotham is entitled to an award of statutory damages. In its discretion, a Court can award a basic level of damages between \$750 and \$30,000 per infringed work. However, in cases of willful infringement, a

Tribune Media Services, Inc. October 16, 2015 Page 3

Court can award damages up to \$150,000 per work. In view of the blatancy of Tribune's infringing conduct as well as the fact that the infringing works are identical to the originals, we believe that a court would find Tribune liable for willful infringement and award Gotham statutory damages of \$150,000 per infringed work plus attorneys' fees.

Gotham treats copyright infringement as a very serious matter and fully enforces its rights against infringers. We therefore demand that Tribune immediately:

- 1. Cease and desist from all further reproduction, publishing, distribution and display of any artwork that infringes Gotham's registered copyrights;
- 2. Other than artwork associated with the titles identified above, identify any other artwork that Tribune has copied from Gotham; and
- 3. Provide us with an accounting of all revenue received by Tribune from its sale, distribution and/or streaming of the titles identified above (as well as any other titles which feature artwork that belongs to Gotham) whether received directly or indirectly including, without limitation any and all revenue received from subscriptions which allow the viewing of Gotham's titles.

In the event that Tribune is interested in continuing to use and display Gotham's original artwork, Gotham would be willing to discuss a possible non-exclusive licensing arrangement.

We look forward to receiving your response to the foregoing demands no later than <u>October 30</u>, <u>2015</u>. Tribune is specifically advised that any failure or delay in complying with these demands will likely compound the damages for which it may be liable.

The above is not an exhaustive statement of all the relevant facts and law, and Gotham expressly reserves all of its equitable and legal rights and remedies, including the right to seek injunctive relief and recover monetary damages.

Sincerely,

COZEN O'CONNOR

By: David B. Sunshine

DBS:mdr

cc: Gotham Distributing Corporation

EXHIBIT "C"

BARRY L. KATZ, ESQ. 60 PORTLAND ROAD

CONSHOHOCKEN, PA 19428-2717

610-649-7650, ext. 118 | barrylkatz@aol.com

July 10, 2017

Arthur R. Block Executive Vice President, General Counsel and Secretary Comcast Corporation One Comcast Center 1701 John F. Kennedy Boulevard Philadelphia, PA 19103

via U.S. Certified Mail

RE: Misappropriation of Copyrighted Artwork Detour / ALP 4067D

Grave Of The Vampire / ALP 4170D [Fandango] The Corpse Vanishes / ALP 4043

[Fandango] Dick Tracy Vs. Cueball / ALP

4105D

[Fandango] Dick Tracy, Detective / ALP 4114D [Fandango] One Body Too Many / ALP 4139D [Fandango] Manos: The Hands Of Fate / ALP 4251D [Fandango] Scared To Death / ALP 6235D

Dear Mr. Block:

I represent Alpha Video ("Alpha"), which is the owner of federal copyrights for the artwork it created for its DVD releases. It has come to Alpha's attention that Comcast Free Movies continually displays Alpha's copyrighted artwork when offering films for viewing by Comcast subscribers. It is also my understanding that Comcast's affiliate, Fandango Inc., continually violates the Alpha copyrights on its website. Screen shots of examples of unauthorized uses of the artwork for the films referenced above are enclosed for your reference. These unauthorized uses constitute infringement of Alpha's copyrights and a violation of 17 U.S.C. § 501. Remedies available to my client include:

- an injunction against further infringement such as an order preventing Comcast from future use and displaying of the copyrighted works;
- damages statutory damages of up to \$150,000; and
- costs and attorney's fees.

On behalf of my client, I demand that you do the following:

- Immediately cease and desist displaying Alpha's copyrighted artwork, or, if you wish to continue to use it, ensure proper credit and copyright information accompany the images;
- Immediately agree in writing that neither Comcast Corporation nor any other person or entity acting on behalf of or in connection with Comcast Corporation will directly or indirectly engage in further unauthorized use of Alpha's intellectual property;
- Remit to my attention payment to Alpha Video of a licensing fee in the amount of \$25,000.00, for the current improper use by Comcast Corporation of Alpha' copyrighted artwork; and
- Provide a detailed list of Alpha's artwork that has been displayed in the past.

Arthur R. Block Comeast Corporation July 10, 2017 Page Two

If I have not received your affirmative response by Monday, July 31, 2017, indicating that you have fully complied with these requirements, I will advise my client to pursue all its legal remedies in connection with this matter. Alpha Video desires to resolve this matter amicably and assumes that you do as well. It is hopeful, therefore, that having been apprised of the foregoing, you will immediately choose at this time to agree voluntarily to its demands and avoid any unnecessary legal intervention.

The proposal to resolve this matter without resorting to litigation is for settlement purposes only and without prejudice to any of Alpha Video's rights, which are expressly reserved.

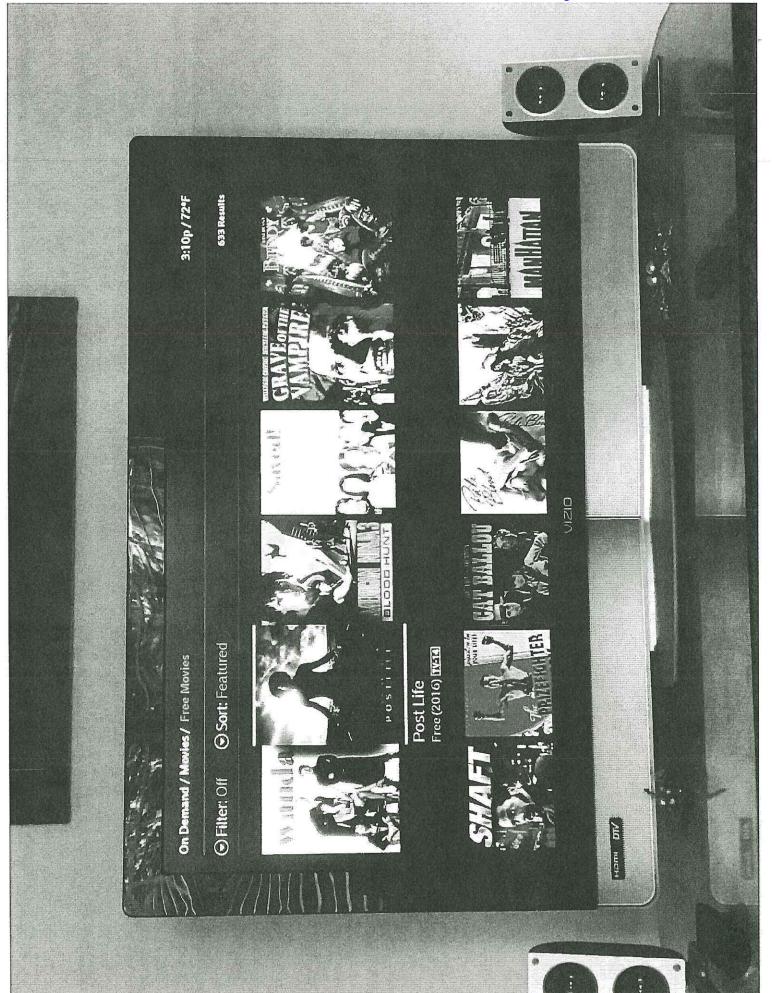
Thank you for your immediate attention to this matter.

Sincerely,

Barry L. Katz, Esq.

Enclosures

cc: Paul Yanover, President, Fandango, Inc.



BARRY L. KATZ, ESQ. 60 PORTLAND ROAD

CONSHOHOCKEN, PA 19428-2717

610-649-7650, ext. 118 | barrylkatz@aol.com

July 10, 2017

Paul Yanover, President Fandango, Inc. 12200 West Olympic Blvd. Suite 400 Los Angeles, CA 90064 via U.S. Certified Mail

RE: Misappropriation of Copyrighted Artwork

The Corpse Vanishes / ALP 4043
Dick Tracy Vs. Cueball / ALP 4105D
Dick Tracy, Detective / ALP 4114D

One Body Too Many / ALP 4139D Manos: The Hands Of Fate / ALP 4251D Scared To Death / ALP 6235D

Dear Mr. Yanover:

I represent Alpha Video ("Alpha"), which is the owner of federal copyrights for the artwork it created for its DVD releases of the subject films. Screen shots of the artwork are enclosed for your reference.

It has come to Alpha's attention that Fandango continually displays Alpha's copyrighted artwork on its website. This unauthorized use constitutes infringement of Alpha's copyright and a violation of 17 U.S.C. § 501. Remedies available to my client include:

- an injunction against further infringement such as an order preventing Fandango, Inc. from future use and displaying of the copyrighted work;
- damages statutory damages of up to \$150,000; and
- costs and attorney's fees.

On behalf of my client, I demand that you do the following:

- 1. Immediately cease and desist displaying Alpha's copyrighted artwork, or, if you wish to continue to use it, ensure proper credit and copyright information accompany the images;
- 2. Immediately agree in writing that neither Fandango, Inc. nor any other person or entity acting on behalf of or in connection with Fandango, Inc. will directly or indirectly engage in further unauthorized use of Alpha's intellectual property; and
- 3. Remit to my attention payment to Alpha Video of a licensing fee in the amount of \$25,000.00, for the past improper use by Fandango, Inc. of Alpha' copyrighted artwork.
- 4. Provide a detailed list of Alpha's artwork that has been displayed in the past.

If I have not received your affirmative response by Monday, July 31, 2017, indicating that you have fully complied with these requirements, I will advise my client to pursue all its legal remedies in connection with this matter.

Paul Yanover, President Fandango, Inc. July 10, 2017 Page Two

Alpha Video desires to resolve this matter amicably and assumes that you do as well. It is hopeful, therefore, that having been apprised of the foregoing, you will immediately choose at this time to agree voluntarily to its demands and avoid any unnecessary legal intervention.

The proposal to resolve this matter without resorting to litigation is for settlement purposes only and without prejudice to any of Alpha Video's rights, which are expressly reserved.

Thank you for your immediate attention to this matter.

Sincerely,

Barry L. Katz, Esq.

Enclosures

cc: Arthur R. Block, Executive Vice President, General Counsel and Secretary, Comcast Corporation



thecorpsevanishes_38170/movieoverview



Enter City + State, ZIP Code, or Movie

9

MOVIES ▼ MOVIE TIMES + TICKETS ▼ MOVIE NEWS ▼ JOIN FANDANGOVIP

DICK TRACY VS. CUEBALL \heartsuit OVERVIEW

MOVIE TIMES + TICKETS

DECEMBER 18, 1946

Released

DICK TRACY

Superhero Film

I hr 2 min

4 Fan Ratings

SYNOPSIS

MOVIE REVIEWS

MORE

TRAILER COMING SOON

😇 FANDANGO FANALERT™

Sign up for a FanAlert and be the first to know when tickets and other exclusives are available in your area.

Email Address

City, State or Zip Code

Also sign me up for FanMall to get updates on all things movies: tickets, special offers, screenings + more.

SIGN UP FOR FANALERT"

Dick Tracy vs. Cueball Synopsis

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MOVIES MOVIE TIMES + TICKETS MOVIE NEWS JOIN FANDANG

9

Enter City + State, ZIP Code, or Movie

FANDANGO

MORE

SYNOPSIS

MOVIE TIMES + TICKETS

OVERVIEW

1 hr 2 min Superhero Film

DICK TRAC

Action

DICK TRACY, DETECTIVE \heartsuit

TRAILER COMING SOON

things movies: tickets, special offers, screenings + Also sign me up for FanMail to get updates on all

Privacy Policy

City, State or Zip Code

SIGN UP FOR FANALERT *

know when tickets and other exclusives are

available in your area.

Email Address

Sign up for a FanAlert and be the first to

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Enter City + State, ZIP Code, or Movie

J FANDANGO

MORE

MOVIE REVIEWS

SYNOPSIS

MOVIE TIMES + TICKETS

OVERVIEW

IOVEMBER 24, 1944

Released

Suspense/Thriller

Comedy

1 hr 14 min

**** Be the first to Rate

ONE BODY TOO MANY 🜣

TRAILER COMING SOON

😇 FANDANGO FANALERT™

Sign up for a FanAlert and be the first to know when tickets and other exclusives are available in your area.

Email Address

City, State or Zip Code

Also sign me up for FanMail to get updates on all things movies: tickets, special offers, screenings +

SIGN UP FOR FANALERT"

One Body Too Many Synopsis

Insurance salesman (Jack Haley) joins would-be heirs among

millionaire's corpse.

READ FULL SYNOPSIS

C | (U www.fandango.com/one-body-too-many_177811/movieoverview

Gift Cards Offers Sign In

MOVIES ▼ MOVIE TIMES + TICKETS ▼ MOVIE NEWS ▼ JOIN FANDANGOVIP ▼

9

Enter City + State, ZIP Code, or Movie

SYNOPSIS

MOVIE TIMES + TICKETS

OVERVIEW

MANOS: HANDS OF FATE \heartsuit

FANDANGO

MORE

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8

TRAILER COMING SOON

😇 FANDANGO FANALERT™

know when tickets and other exclusives are Sign up for a FanAlert and be the first to available in your area.

Email Address

City, State or Zip Code

Also sign me up for FanMali to get updates on all things movies: tickets, special offers, screenings +

SIGN UP FOR FANALERT"

Manos: Hands of Fate Synopsis

A family becomes lost on a road trip and stumbles upon an underground devil-worshipping cult.

READ FULL SYNOPSIS

G | C www.tangango.com/manos:nangsottate_1us154/mgvieoverview

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Gift Cards Offers Sign In

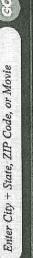
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FANDANGO

@ www.fandango.com/scared-to-death_121242/movieoverview

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TRAILERS

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MOVIE TIMES + TICKETS

OVERVIEW

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Bela Lugosi, Douglas Fowley, Mat Pendleton, George Zucca, Jayce Compton in Evira's Movie Macabre: Scared To Death

ELVIRA'S MOVIE MACABRE: SCARED TO DEATH



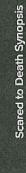








I of I



From a sanitarium morgue slab, a corpse tells how she died and who was involved in her death.

READ FULL SYNOPSIS

EXHIBIT "D"

BARRY L. KATZ, ESQ. 60 PORTLAND ROAD CONSHOHOCKEN, PA 19428-2717

610-649-7650, ext. 118 | barrylkatz@aol.com

July 18, 2017

Henry W. Huffnagle Senior Counsel via mail and e-mail (Henry Huffnagle@comcast.com)

Comcast Cable Communications, LLC

One Comcast Center 1701 John F. Kennedy Boulevard Philadelphia, PA 19103-2838

RE: Misappropriation of Copyrighted Artwork - Your E-mail of July 17, 2017

Dear Henry:

Thank you for your response to my letter from the 10th. In the time since I first wrote to Comcast, an Alpha employee discovered that as an upsell, Comcast Free Movies also uses Alpha's copyrighted artwork on "Because You Watched" screens to offer films for purchase ("Buy SD \$10.99") by subscribers after they view similar films on the channel. Copies of screenshots evidencing such additional use(s) are enclosed.

In light of the fact that Comcast is using Alpha's copyrighted artwork to sell film downloads, the licensing fee demanded in my previous letter has increased to \$50,000.00, and the scope of the other demands is expanded to include these uses as well.

I await your reply.

Sincerely,

Barry L. Katz, Esq.

Enclosures

Because You Watched John Paul Jones



Show Me Another
Refresh this row with new recommendations

The Top 100 TV Shows Have Been Saved For You



Santa Fe Trail

Santa Fe Trail



Buy SD \$10.99

Point classmates go to Kansas to stop abolitionist John (1940) Dashing Jeb Stuart (Errol Flynn) and his West Errol Flynn, Olivia de Havilland, Raymond Massey Brown (Raymond Massey).

Details 110min TV-PG CC

Trailer Buy

Mark Watched Favorite

People Also Watched



















VIZIO

Santa Fe Trail

Buy SD \$10.99

Errol Flynn, Olivia de Havilland, Rayn (1940) Dashing Jeb Stuart (Errol Flyr Point classmates go to Kansas to sto Brown (Raymond Massey).

Buy Trailer Favorite

People Also Watched

EXHIBIT "E"



Don Foster, Esquire (267) 338-1357 (Direct Dial) (267) 338-1335 (Facsimile) dfoster@offitkurman.com MARYLAND
PENNSYLVANIA
VIRGINIA
NEW JERSEY
NEW YORK
DELAWARE
WASHINGTON, DC

January 19, 2018

Via First Class Mail

Henry W. Huffnagle, Esquire Senior Counsel Comcast Cable Communications, LLC One Comcast Court, 1701 JFK Blvd. Philadelphia, PA 19103

Re:

Alpha Video

Dear Mr. Huffnagle:

By way of introduction, we have been retained by Alpha Video ("Alpha") with regard to copyright infringement issues. Barry Katz, Esquire forwarded to us your name as well as the prior correspondence between Alpha and Comcast.

In your email of July 17, 2017 to Mr. Katz, you advised that Comcast was still investigating this matter. Subsequent to your email, Mr. Katz advised you that Comcast's illegal use of Alpha's images continued, and provided several screen shots demonstrating Comcast's use of Alpha images. Mr. Katz advises that he has not heard anything further from you concerning Comcast's investigation. While it appears those specific images previously identified have been removed by Comcast, as of the date of this letter additional images continue to be utilized by Comcast. (See attached). Given the repeated communications from Alpha to Comcast concerning Comcast's use of copyrighted Alpha images, Comcast's actions can only be regarded as willful.

I would note that Alpha received correspondence from Jeremy S. Goldman, Esquire of Frankfurt Kurnit Klein & Selz advising that Gracenote f/k/a Tribune Media Services, LLC, having provided Alpha images to Comcast, was asked to respond to Alpha's prior correspondence. We have written to Mr. Goldman, coping you on the correspondence, and subsequently spoken with him. However, whether sourced from Gracenote or another party, Comcast continues to unlawfully use Alpha images.

Alpha takes the enforcement of its copyrights seriously, and will use all legal means available to protect its rights. Therefore, in the first instance, we must insist that Comcast:

1. Immediately cease and desist from any further use of Alpha's artwork, which includes any image that is included in the Alpha images appearing on the www.Oldies.com website;



MARYLAND
PENNSYLVANIA
VIRGINIA
NEW JERSEY
NEW YORK
DELAWARE
WASHINGTON, DC

Comcast Cable Communications, LLC January 19, 2018 Page Two

- 2. Identify any other Alpha artwork that Comcast has used in any fashion and, if sourced from a third party, the identity of that third party;
- 3. Provide an accounting of all revenue received by Comcast from its use of the previously identified images, the attached images, and as supplemented by any other titles which feature artwork belonging to Alpha, together with any advertising revenues earned directly or indirectly in connection with the use of Alpha's images.
- 4. Identify the images and the number of occasions on which an Alpha image was used by Comcast in any medium, as well as when the movie associated with any image was streamed, downloaded or otherwise accessed by a Comcast customer.

In addition to Comcast's obligation to stop any further use of Alpha's artwork, Comcast has a duty to preserve all evidence that may be relevant to the issue raised in this letter and that may be the subject of future litigation. This duty of preservation extends to, but is not limited to, data files, e-mails, calendars, telephone logs, access lists, and logs that are located on Comcast's computer networks, e-mail servers, individual computer workstations, and external drives, or are located on any of those devices within Comcast's control but not owned by Comcast, such as Comcast's web hosting service. Specifically, but not exclusively, Comcast is hereby on notice that it must preserve all evidence of all of its uses of Alpha's artwork, which is a duty that extends to Comcast's employees and agents. I request that Comcast notify its employees and agents of this retention request immediately.

Sanctions for violating any of the foregoing duties can be severe, and include substantial monetary sanctions, adverse inferences in evidentiary rulings, and the entry of judgments by default. I am hopeful that we can resolve the issues raised in this letter short of litigation, but the above-referenced duties must be satisfied in order to do so.

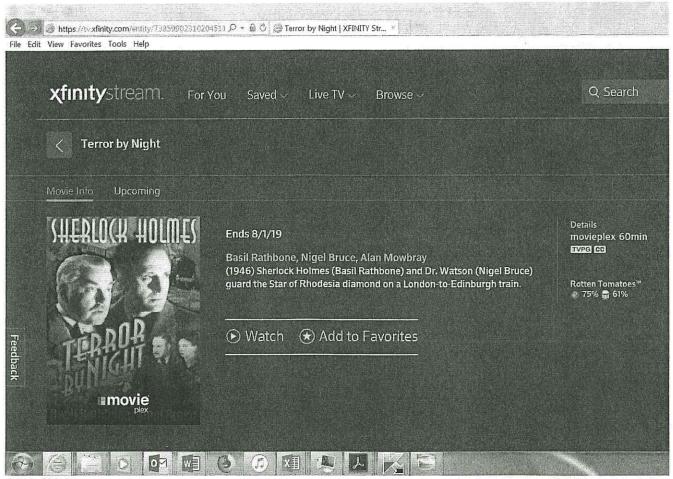
While Alpha would like to work with Comcast to resolve these issues without litigation, Comcast must cease using Alpha's images. Perhaps I can suggest that you give me a call and we can discuss the issues raised in this letter.

Don Foster

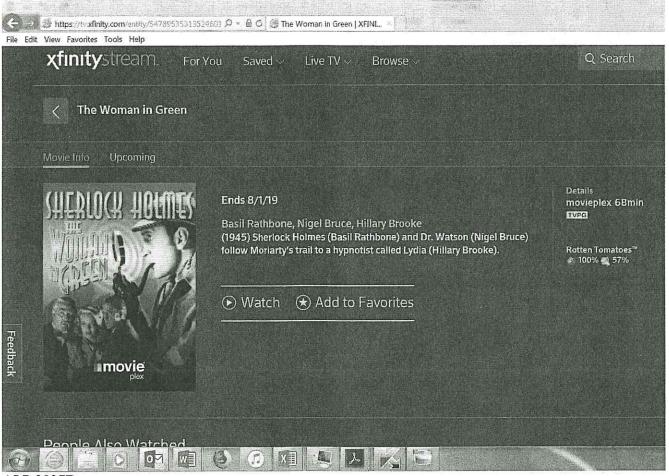
Enclosure



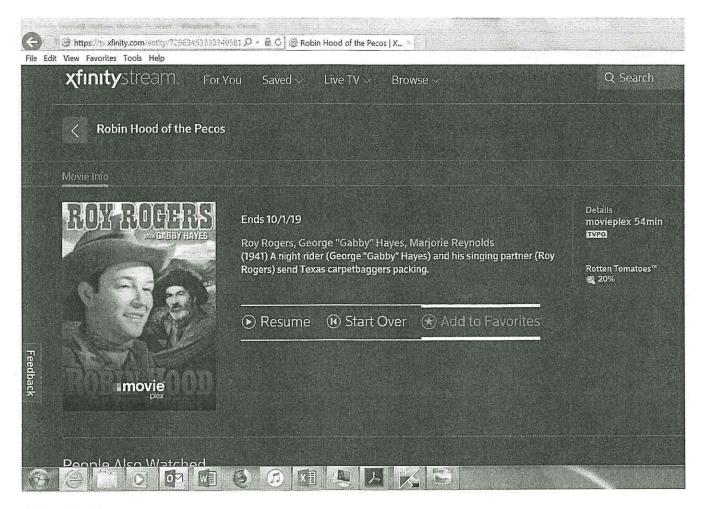
ALP 6019D



ALP 6024D



ALP 3037D



Alpha 6137D